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DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 3342 - 2012]

Authorization to Seize Property Involved in Drug Offenses for Administrative Forfeiture (2012R-9P)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its regulations to allow the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to exercise, for a one-year period following the effective date of this rule, the authority to seize and administratively forfeit property involved in controlled substance offenses. Many years of experience have demonstrated that forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations that would continue to function after the conviction and incarceration of individual offenders. Moreover, administrative forfeiture permits the expedient and effective use of this crucial law enforcement tool.

DATES: This rule is effective February 25, 2013.

FOR FURTHER INFORMATION CONTACT: Denise Brown, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC 20226, telephone: (202) 648-7105.

SUPPLEMENTARY INFORMATION:

Background

The Attorney General has delegated to ATF the authority to investigate, seize, and forfeit property involved in a violation or attempted violation within its investigative jurisdiction. *See* 28 CFR 0.130(b). ATF investigations focusing on violent crime frequently involve complex criminal organizations with multiple criminal enterprises and uncover drug-related offenses in addition to offenses within ATF's primary jurisdiction, such as violations of the Gun Control Act, 18 U.S.C. Chapter 44, or the Contraband Cigarette Trafficking Act, 18 U.S.C. Chapter 114. In such investigations, ATF does not currently have authority under 21 U.S.C. Chapter 13 to seize for administrative forfeiture property involved in controlled substance offenses. Instead, ATF generally refers such property to the Drug Enforcement Administration (DEA), which is primarily responsible for investigating violations of drug laws contained in title 21 of the United States Code. DEA then initiates, processes, and concludes all necessary forfeiture actions for the controlled-substance-related property.

The Department of Justice believes that forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations that would continue to function after conviction and incarceration. The Department further believes that administrative forfeiture permits the expedient and effective use of this crucial law enforcement tool.

An uncontested administrative forfeiture can be perfected in 60-90 days for minimal cost, including the statutorily required advertisement and notice by registered mail. Conversely, the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months

to years. In the meantime, the government incurs additional costs if the property requires storage or maintenance until a final order of forfeiture can be obtained.

In recognition of the link between drug trafficking and many criminal organizations, the Attorney General has authorized the Federal Bureau of Investigation (FBI) to seize and forfeit property under 21 U.S.C. 881. *See* 28 CFR 0.85(a). This delegation of authority has allowed the FBI to more effectively investigate and dismantle criminal organizations.

ATF joined the Department of Justice in January 2003 pursuant to the Homeland Security Act of 2002 (Public Law 107-296). One of the primary missions of the ATF is to combat firearm-related violent crime. The nexus between drug trafficking and firearm violence is well established. The Attorney General, however, has not previously delegated to ATF title 21 seizure and forfeiture authority. On review of the current role and mission of ATF within the Department of Justice, the Attorney General has decided to authorize a temporary delegation of title 21 seizure and forfeiture authority to determine whether such authority can enhance the effectiveness of ATF in the investigation of violent crimes involving firearms. Consequently, by this final rule the Attorney General is delegating administrative seizure and forfeiture authority under 21 U.S.C. 881 to the ATF for a trial period of one year. The language in this rule delegating administrative forfeiture authority to ATF is modeled after the language in the FBI authorization. ATF may continue to exercise this delegated authority for all property in its possession on or before the end of the one-year period, even if this delegation is not otherwise extended.

Final Rule

This rule amends the regulations in 28 CFR Part 0 to authorize the Director of ATF to exercise, for a period of one year from the effective date of this final rule, the authority to seize, forfeit, and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881.

Forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations that otherwise would continue to function after conviction and incarceration of individual participants. The Attorney General has decided to adopt a one-year delegation of administrative seizure and forfeiture authority to permit ATF to make expedient and effective use of this crucial law enforcement tool in the investigation of organizations and individuals involved in firearm violence associated with drug trafficking. After considering the effectiveness of this delegation over the course of the one-year period, the Attorney General may elect to make the delegation of authority to the ATF permanent in a subsequent rulemaking.

Administrative Procedure Act (APA)

Notice and comment rulemaking is not required for this final rule. Under the APA, “rules of agency organization, procedure or practice,” 5 U.S.C. 553(b)(A), that do not “affect[] individual rights and obligations,” *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of section 553 of title 5 of the United States Code. *See JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (section 553(b)(A) applies to “agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency”) (quoting *Batterton v. Marshall*, 648 F.2d

694, 707 (D.C. Cir. 1980) (internal quotation marks omitted)). The revisions to the regulations in 28 CFR Part 0 are purely a matter of agency organization, procedure, and practice that will not affect individual rights and obligations. This rule does not expand the government’s ability as a matter of law to effectuate forfeitures; it simply authorizes the Director of ATF to effectuate such forfeitures. Internal delegations of authority such as in this final rule are “rules of agency organization, procedure, or practice under the APA.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and with Executive Order 13563, “Improving Regulation and Regulatory Review.” This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a “regulation” or “rule” as defined by that Executive Order.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a rule for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Authority and Issuance

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, and for the reasons set forth in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0--ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for 28 CFR Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.130 is amended by designating paragraph (b) as paragraph (b)(1) and by adding new paragraph (b)(2) to read as follows:

§ 0.130 General functions.

* * * * *

(b)(1) * * *

(2) Seize, forfeit, and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881 and applicable Department of Justice regulations. This authority is effective during the 12-month period beginning on February 25, 2013 and ending on

February 25, 2014, except that it may continue to be exercised after February 25, 2014
with respect to any property in the Bureau's possession on or before that date.

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__August 21, 2012__	
Date	Eric H. Holder, Jr. Attorney General

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